

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



April 2, 1992

ALL COUNTY LETTER NO. 92-36

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: TRANSFER OF ASSETS (AFDC)

REFERENCES: MPP 42-221

The purpose of this letter is to inform County Welfare Departments of the impending repeal of the Manual of Policy and Procedures (MPP) Section 42-221. MPP Section 42-221 prohibits the transfer of real and/or personal property with the intent of qualifying for aid or remaining eligible for aid under the Aid for Families with Dependent Children (AFDC) Program.

Department of Social Services has determined after review and research that Section 42-221 is being applied without clear statutory authority. Current State statutes do not provide for a period of ineligibility when property has been transferred for the purposes of securing AFDC.

Attached is a draft copy of the repeal regulations package. Upon receipt of this letter, Counties are to cease compliance with MPP 42-221. A period of ineligibility which would be required by 42-221 is not to be imposed on applicants or recipients after the effective date of this letter. Notice of Action Message M42-221 will be obsolete effective with the repeal of MPP Section 42-221. County implementation shall commence immediately and be completed as soon as administratively possible, but no later than May 1, 1992. The planned effective date for the repeal will be no later than May 1, 1992.

Food Stamps

The Food Stamp requirements in this area are defined in both Federal and State regulations (Food Stamp Manual Section 63-501.6). There will be no change from those current Food Stamp requirements which prohibit the transfer of resources in order to become eligible for the Food Stamp Program.

If you have any questions regarding this repeal effort, please call Mr. Vincent Toolan at (916) 654-1808.


MICHAEL C. GENEST, Deputy Director
Welfare Program Division

Attachment

Repeal Section 42-221:

42-221 TRANSFER OF PROPERTY

42-221

Property, real or personal, constitutes a resource and is subject to the basic public assistance principle that resources which are actually available to the applicant or recipient must be considered in evaluating need and in determining eligibility. Since property is a resource, the transfer or assignment of property for less than the fair market value must be examined. If the property transferred would have affected the eligibility of the applicant or recipient or the amount of grant to which he was entitled, the purpose and intent of the transferor must be evaluated.

Interpretation -- The reason an applicant or recipient transferred property, i.e., his actual intent in doing so, is the single, most essential element to be considered in determining the effect of the transfer upon his eligibility. A transfer of property is, in itself, disqualifying only when the transferor's reason for making the transfer was to qualify for aid or for a greater amount of aid.

In determining the transferor's "intent" it is necessary to evaluate his stated reason for the transfer and the consistency of such statement with the known facts. The consideration received for the property transferred may not have been adequate; the transfer may have been ill-advised and/or the transferor in making the transfer may have exercised poor judgment. However, these facts alone do not automatically establish that a transfer was disqualifying. The motives of the transferor must be carefully scrutinized, the important determination being the transferor's actual reason for the transfer and the relationship of that reason to his application for or continued receipt of aid.

.1 Responsibilities in Property Transfers

.11 Responsibility of Applicant/Recipient

Applicants and recipients are responsible, insofar as able, for giving all available information to assist the county in determining whether a transfer of property was made in order to qualify for aid or to qualify for a larger amount of aid. Recipients are also responsible for immediately notifying the county of any transfer which occurs after aid is granted.

Although only the person concerned can state what his intent was in transferring property, his actions can support or contradict such a statement and his real intent can be determined only by consideration of all the facts.

.12 Responsibility of County

The county is responsible for informing the applicant or recipient regarding real and personal property limitations and requirements, his rights and responsibility in relation to his property and the advisability of discussing any proposed property transfer with the county before the transfer occurs.

Interpretation -- The county can help protect the interests of the applicant by interpreting to him at the time of application, and as often as may be necessary thereafter, the purposes for which he may retain property. (See Section 42-207.)

.2 Transfers of Real or Personal Property Which Do Not Result in Ineligibility

There is a presumption that transfers made more than two years preceding the application were not for purposes of qualifying for aid or for a greater amount of aid. Other circumstances under which property transfers do not result in ineligibility are specified in the following sections:

.21 Transfer for Fair Consideration

A transfer of property in which the grantor receives fair consideration, in light of current property values, in return for his equity does not result in ineligibility provided the resultant holdings are within the maximum allowed.

.22 Transfer to Satisfy a Debt

A transfer of property to satisfy a bona fide debt or obligation in an amount which represents a reasonably adequate consideration for the grantor's equity does not result in ineligibility. Due to the mutual obligation existing between parent and child, support given to a parent is not a valid debt unless there is evidence that the child became indebted in order to render the assistance or that the assistance given otherwise resulted in undue hardship on him or his immediate family.

.23 Transfer When Foreclosure Imminent

Transfer or assignment of property when foreclosure or repossession is threatened, or when it is clear that such property cannot be retained, does not result in ineligibility unless there is evidence of collusion. When there is evidence that a grantor was unable to refinance the property due to the necessity for payment of a substantial sum on the principal or because of his advancing years and diminishing ability to make payments, the transfer may be held to involve property in which foreclosure was imminent.

Interpretation -- Even though foreclosure or repossession of property may be imminent, the recipient may be able to realize something from his equity in the property. This may be accomplished by sale of his

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equity, refinancing of the property, etc. In any event, the county should offer every assistance possible to the recipient to protect his property interest or, if the property must be disposed of, to help him in realizing the maximum return from his equity.

.24 Transfers of Separate Property of the Spouse

The transfer by a spouse of his or her separate real or personal property does not affect the eligibility of the other spouse.

.25 Transfer of Real Property With Retention of Life Estate (Eligibility Not Affected)

Real property transferred with retention of life estate is subject to the monetary limits as set forth in Section 42-207.

.251 The Home Property

Transfer of real property at any time with the retention of life estate does not result in ineligibility when the property is the home of the grantor and will continue to be utilized to meet his housing need.

The life estate agreement must be written and recorded. (See Section 42-221.34 for circumstances under which it is presumed that a transfer of property with retention of life estate results in ineligibility.)

Interpretation -- The code provides that a property transfer does not result in ineligibility provided:

- a. The transfer does not deprive the individual of the current use, enjoyment or income thereof, and
- b. The value of the property transferred would not have rendered the individual ineligible for aid.

Usually, when an individual transfers property and retains a life estate, he also retains the current use, enjoyment and income of the property. However, circumstances may change in the future. In some instances the individual may need to sell the property to finance another living plan and his ability to sell may be seriously limited because of a remainderman's interest in the property. Therefore, an applicant or recipient who considers deeding all or a portion of his real property and retaining only a life estate therein, should be urged to include in the deed the right to revoke the life estate transfer at any time during his lifetime and thus protect his right to receive the entire proceeds from sale, if this becomes necessary. Such a provision in no way prevents the remainderman from receiving the property without probate, at the time of death of the life tenant, as long as it has not been necessary for the life tenant to revoke the life estate.

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An applicant or recipient cannot be required to include the right of revocation provision in the deed if he is going to be able to utilize the property as a home at the time the life estate provision is made. However, adding the right of revocation is a protection to the applicant/recipient if there is a later change in individual circumstances.

- .26 Transfer of a life estate shall be subject to the same treatment as if it were a transfer of the entire interest in the property itself. The value of the life estate shall be the same as that of the specific property involved.

.3 Transfers of Real or Personal Property Which Result in Ineligibility

Transfers of property made to qualify for aid or for greater amount of aid result in ineligibility. Circumstances under which ineligibility is presumed to exist as a result of property transfer are specified in the following sections.

.31 Transfer in Return for Life Care

A transfer of property subject to the condition that the grantee will provide full support for the grantor for the remainder of his life renders the grantor ineligible. If an enforceable contract provides for less than full support, the value of the support provided shall be considered income.

.32 Transfer for Purpose of Reducing Holdings Within Statutory Maximum

A transfer of property to reduce remaining holdings within the statutory maximum results in ineligibility. If the transfer occurred more than two years prior to the date of application for public assistance, there is a presumption that the transfer was made in good faith and not for the purpose of qualifying for aid.

.321 Applicant or Recipient Unable to Account for Disposition of Property

When an applicant or recipient claims that his property holdings have been reduced within the statutory maximum but is unable to satisfactorily account for the disposition of the property, there is a presumption that the property was transferred for the purpose of qualifying for aid.

Interpretation -- Lack of verification of all expenditures is not in itself basis for denial or discontinuance of aid provided there is no evidence of transfer to qualify or of unreported property and provided further that the applicant's or recipient's explanation of expenditures is reasonable. If there is no reasonable explanation for the disposition of property and no substantial evidence that the property is still in the applicant's or recipient's possession, there is a presumption that the property has been

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transferred and that the transfer was made with intent to qualify for aid. In such case, the resulting period of ineligibility is determined as for any other property transfer with intent to qualify (see Section 42-221.4).

.33 Transfer of Real Property to Safeguard Future Eligibility Status

Even though the combined real property holdings of an applicant or recipient or the equity therein is within the statutory maximum (42-207.1), a transfer of all or a portion of such property results in ineligibility if the transfer is made to safeguard future eligibility status by divesting the applicant or recipient of proceeds which he would receive if the property were sold.

.34 Transfer of Real Property With Retention of Life Estate (Ineligibility Presumed)

There is a presumption that ineligibility results from a transfer of real property without consideration with retention of life estate if:

- a. Transfer was within two years of date of application for public assistance, and
- b. Value of personal property when added to market value of transferred property would have exceeded the maximum amount of property reserve permitted by law.

The presumption is overcome if the transferor's purpose at the time of transfer was not to avoid future ineligibility. (See Section .25 above for circumstances under which it is presumed that a transfer of property with retention of life estate does not affect eligibility.)

.35 Relinquishment of Life Estate

There is a presumption that ineligibility results from relinquishment of a life estate in real property if:

- a. The property is being utilized by the life tenant as his home, and
- b. The life tenant does not receive adequate consideration.

Unless this presumption is overcome, ineligibility results.

.351 When the transfer of title with retention of life estate occurred two or more years prior to application for public assistance, adequate consideration for a subsequent relinquishment of the life estate is determined by applying the Internal Revenue

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Service (IRS) Tax Table formula, Table A, 26 CFR Section 20.2031-7 (IRS Code) (see Handbook Interpretation below). Otherwise, adequate consideration is that which is consistent with the net sale value of the property at the time of relinquishment. If the remainderman has invested in the property, the value of the life estate would be modified by the remainderman's investment.

.352 Adequate consideration for property is defined in terms of the total net market value of the property, this being true whether the property is disposed of in one transaction, i.e., outright sale or in two transactions, i.e., (a) transfer with retention of life estate and (b) relinquishment of the life estate to permit sale.

.353 When an applicant or recipient receives adequate consideration for relinquishment of his life estate interest, it eliminates the presumption that relinquishment was to qualify for aid. If he does not receive adequate consideration, there is a presumption the relinquishment was to qualify for aid. However, this presumption can be refuted and when such presumption exists, the county has an obligation to go one step further and evaluate the applicant's or recipient's intent.

.354 When it is determined that an applicant or recipient in two steps (1) transfer with retention of life estate and (2) subsequent relinquishment of the life estate, has divested himself of property the situation is treated in the same manner as it would have been if he had divested himself of the entire interest in the property in one transaction.

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.36 Internal Revenue Service Tax Table Formula, April 1, 1986.

- a. Determine the appraised value of the property.
- b. Deduct encumbrances from the appraised value.

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- c. Ascertain from table below the factor opposite the nearest age of life tenant at time of relinquishment.

AGE	FACTOR	AGE	FACTOR
60	.74491	78	.47049
61	.73267	79	.45357
62	.72002	80	.43659
63	.70696	81	.41967
64	.69352	82	.40295
65	.67970	83	.38642
66	.66551	84	.36998
67	.65098	85	.35359
68	.63610	86	.33764
69	.62086	87	.32262
70	.60522	88	.30859
71	.58914	89	.29526
72	.57261	90	.28221
73	.55571	91	.26955
74	.53862	92	.25771
75	.52149	93	.24692
76	.50441	94	.23728
77	.48742	95	.22887

- d. Multiply the factor obtained in the above table by the figure which was obtained from Item b. For example, if the net appraised value of the unencumbered property in question is \$1,000, and if the life tenant's nearest age was 71, the value of her life estate interest in this property would be \$589.14 (\$1,000 multiplied by the 71 age factor of .58914).

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.37 Transfer of Income Producing Personal Property

There is a presumption that a transfer of income producing personal property is for the purpose of qualifying for a greater amount of aid. Unless this presumption is overcome, ineligibility results.

.4 Duration of Ineligibility Due to Transfer of Property

After a transfer of property which resulted in ineligibility, the period of ineligibility to public assistance begins the first day of the month following that in which the transfer occurred. This period is not extended because of income received during the period.

Aid paid to a recipient during the period of ineligibility has no effect on the period of ineligibility.

.41 Duration of Ineligibility Due to Transfer of Real Property

The duration of ineligibility due to a transfer of real property (other than that included in the allowable reserve) is the period during which a reasonable return for the grantor's equity in the property, had it been sold, would have supported the grantor and those dependent upon him. If at the time of transfer the grantor's property reserves were less than the maximum allowable (see Section 42-207.6), the amount which would have been available to support the grantor and his dependents from the property transferred is reduced by that amount which would have given him the maximum property reserve, before the period of ineligibility is computed.

.42 Duration of Ineligibility Due to Transfer of Personal Property

The duration of ineligibility due to a transfer of personal property is the period during which the amount of personal property in excess of the statutory maximum at the time of the transfer would have supported the grantor and those dependent upon him.

.43 Monthly Maintenance Allowance

The following amounts are used as the monthly maintenance allowance for an individual with and without, dependents: (A dependent is one whose major support has come from the applicant or recipient.)

1 person	\$200
1 person with spouse, or, 1 person with one dependent	300

The allowance is increased by \$100 for each additional dependent.

Allowance may also be made for the actual cost of necessary expenditures, other than normal living expenses, i.e., major medical costs, out-of-home care, major repairs to the home when necessary to put it into a livable condition, etc.

Interpretation -- This monthly maintenance allowance is intended to cover all normal living expenses including food, shelter, clothing, recreation, incidentals, minor medical and dental costs, etc., for the transferor and his dependents. Allowance in excess of the prescribed amount for monthly maintenance is appropriate only when the county determines that there have been necessary expenditures for bona fide needs other than normal living expenses. Probably the most common such

expenditure is for major medical costs and, in most instances, it is reasonable to consider as "major" those medical costs which exceed five percent of the allowance for monthly maintenance.

Usually, the cost of major medical care is added to the monthly maintenance allowance to determine the total amount allowable for a month. However, in some instances a substantial part of normal living expenses may be included with the medical costs. For example, a long-term patient in a nursing home is required to pay \$300 a month for his care. In such case it would be appropriate to allow the \$300 charge for nursing care in lieu of the \$200 monthly maintenance allowance plus \$15 for incidentals and the actual costs of doctors' visits, medication, etc., not provided by the nursing home.

.44 Two or More Transfers

If there are two or more transfers resulting in ineligibility and each of the transfers reduced property within the amount allowable to qualify for aid, the period of ineligibility is the sum of the periods resulting from each transfer and begins with the first day of the month following that in which the first transfer occurred.

Interpretation -- When there has been a series of property transfers, some of which did not reduce property holdings within the amount allowable but the net result of the several transfers is determined to have been for the purpose of reducing property holdings within the maximum allowable, a reasonable duration of ineligibility must be determined based on the facts in the individual case.

In most such cases, it is reasonable to treat the transfers as one transfer which was accomplished in a series of steps. The duration of ineligibility is then determined in the same manner as for a single transfer, it being considered that all the transfers in the series occurred on the date of the first transfer. Although this method of determining the duration of ineligibility is appropriate in most such cases, it may not be reasonable when large amounts of property were transferred late in the series of transfers. In such a case ineligibility should not terminate prior to the date it would terminate if any one of the transfers in the series were considered individually.

.45 Period of Ineligibility Ends

The period of ineligibility ends if the property which was transferred and which caused ineligibility is reconveyed to the grantor, or if he receives reasonably adequate consideration for it subsequent to the transfer.

Authority Cited:

Reference: